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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Docket No. NHTSA–2011–0185

RIN 2127-AL25

Federal Motor Vehicle Safety Standards; Matters Incorporated by Reference

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to petition for reconsideration; technical corrections.

SUMMARY: On January 6, 2012, NHTSA published a final rule updating and consolidating all of the references to the many standards and practices that are incorporated by reference into the Federal motor vehicle safety standards (FMVSSs). Additionally, the final rule removed an obsolete FMVSS, No. 208a, as well as various obsolete provisions in other FMVSSs.

The agency received a petition for reconsideration of that final rule from the Alliance of Automobile Manufacturers. The petitioner asserts that the amendments to one FMVSS are not based on the latest version of that FMVSS and further asserts that several references to standards are out of date or contain minor omissions. The petitioner requests that technical amendments be made to address these issues.

In response to the petition, this document amends certain paragraphs in FMVSS No. 202a to reflect the substantive language of the FMVSS in effect before the effective date of the January 6, 2012 final rule, with the addition of the cross-references to the consolidated list of materials incorporated by reference. The agency is denying the other requests made in the petition. This document also makes technical amendments to correct minor errors in the

consolidated list of incorporated material and some of the FMVSS sections that reference this list.

DATES: The effective date of this final rule is **[PLEASE INSERT DATE THAT IS 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 6, 2012.

Petitions for reconsideration must be received by **[PLEASE INSERT DATE THAT IS 45 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: You may contact William H. Shakely of the NHTSA Office of Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590. Telephone: (202) 366-2992; Facsimile: (202) 366-3820.

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I. Background

On January 6, 2012, NHTSA published a final rule updating and consolidating all of the references to the many standards and practices that are incorporated by reference into the Federal

motor vehicle safety standards (FMVSSs) in 49 CFR Part 571 (Part 571).¹ Although this part already contained a section regarding publications incorporated by reference, the list in that section was incomplete and had not been updated regularly. Instead, in many cases, materials had been incorporated piecemeal into individual FMVSSs throughout Part 571. The January 6, 2012 final rule moved those scattered references into the centralized list so that it contains all of the references for the entire Part 571.

Additionally, the final rule removed one obsolete FMVSS, No. 208a, as well as various obsolete provisions in other FMVSSs. Those provisions were applicable to vehicles and equipment manufactured before dates that had already passed and were no longer needed in the Code of Federal Regulations (CFR).

II. Petition for Reconsideration and Agency's Response

The agency received a petition for reconsideration from the Alliance of Automobile Manufacturers (Alliance) on February 21, 2012.² The petition asserts that the amendments to one FMVSS were not based on the latest version of a standard incorporated by reference. The petition further asserts that several references to standards are out of date or contain minor omissions. The petition requests that amendments to the regulatory text be made to address these issues.

As described below in the Rulemaking Analyses and Notices section, Executive Order 13563, "Improving Regulation and Regulatory Review," requires agencies to review existing rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome. Pursuant to this Executive Order, the agency conducted a detailed review of the January 6, 2012

¹ 77 FR 751 (Jan. 6, 2012); Docket No. NHTSA-2011-0185-0001.

² Alliance Petition for Reconsideration, Docket No. NHTSA-2011-0185-0002.

final rule, including the provisions identified by the Alliance's petition, and identified several technical errors that this document corrects.

A. Amendments to FMVSS No. 202a

The Alliance petition states that FMVSS No. 202a, Head Restraints,³ was amended in a final rule published on November 2, 2010.⁴ However, the petition asserts that the amendments to FMVSS No. 202a in the January 6, 2012 final rule regarding incorporation by reference appear to be based on the regulatory text in effect before the effective date of the November 2, 2010 final rule. The Alliance requests that FMVSS No. 202a be amended to reflect the amendments made in the November 2, 2010 final rule.

Agency Response – The agency is granting the Alliance's request. The amendments made by the January 6, 2012 final rule inadvertently relied on out-of-date regulatory text for FMVSS No. 202a. This document amends the relevant paragraphs to reflect the amendments made to the standard by the November 2, 2010 final rule.

B. Reference to ASTM E274–65T in FMVSS Nos. 208 and 301

The Alliance petition states that both FMVSS No. 208, Occupant Crash Protection, and FMVSS No. 301, Fuel System Integrity, reference ASTM E274–65T, “Tentative Method of Test for Skid Resistance of Pavements Using a Two-Wheel Trailer.” The Alliance asserts that ASTM E274–65T was a “tentative” test protocol at one time and has since been superseded, with the current version being ASTM E274/E274M–11, “Standard Test Method for Skid Resistance of Paved Surfaces Using a Full-Scale Tire.” The Alliance requests that NHTSA update the

³ There are currently two FMVSSs for head restraints: FMVSS No. 202, which applies to vehicles manufactured before September 1, 2009, and FMVSS No. 202a, which applies to vehicles manufactured on or after September 1, 2009.

⁴ 75 FR 67233 (Nov. 2, 2010). The effective date of this final rule was January 3, 2011.

appropriate references in FMVSS Nos. 208 and 301 (including the laboratory test procedures) and 49 CFR 571.5 to reference the current version of the standard.

Agency Response – NHTSA is denying the Alliance’s request to update the version of ASTM E274 referenced in FMVSS Nos. 208 and 301. The January 6, 2012 final rule made technical amendments that did not substantively alter or remove from Part 571 any of the existing incorporations by reference in that Part, except for those publications only referenced in the obsolete requirements that were removed from the CFR. For this reason, the agency determined that it was not necessary to provide an opportunity for public comment. However, we believe that the incorporation by reference of a different version of standard, like ASTM E274-11/E274M-11, is beyond the scope of this rulemaking and would likely require an opportunity for public comment. Accordingly, we are denying the Alliance’s request.

The agency further notes that the only rationale offered by the Alliance for incorporating a different version of ASTM E274 into FMVSS Nos. 208 and 301 is the fact that the recommended version is the current version of the standard. The Alliance provided neither comparative information regarding the different versions of the standard nor information on how incorporation of the current version would affect (or not affect) the requirements of FMVSS Nos. 208 and 301.

Reviewing the Alliance’s request and the relevant sections of Part 571, the agency notes that FMVSS No. 301 was not listed as one of the sections incorporating ASTM E274-65T by reference in the consolidated list of material incorporated by reference nor was a cross-reference to the consolidated list included in FMVSS No. 301. This notice amends the relevant sections to reflect this incorporation by reference.

C. Clarifying Correction to 1985 Annual Book of ASTM Standards Citation

The Alliance petition states that clarification should be provided for several references to the 1985 Annual Book of ASTM Standards, Vol. 05.04, “Test Methods for Rating Motor, Diesel, Aviation Fuels, A2. Reference Materials and Blending Accessories, (“ASTM Motor Fuels section”),” A2.3.2, A2.3.3, and A2.7. Specifically, the Alliance requests that the citation in the consolidated list of material incorporated by reference be amended to read as follows (the underlined text indicates text suggested by the Alliance), Section I of the 1985 Annual Book of ASTM Standards, Vol. 05.04, “Test Methods for Rating Motor, Diesel, Aviation Fuels, A2. Reference Materials and Blending Accessories, (“ASTM Motor Fuels section”),” A2.3.2, A2.3.3, and A2.7 of Annex 2. The Alliance further requests that the citation in paragraph S5.1.1.1(d) of FMVSS No. 205(a) be amended to include the following underlined text “A2.7 in the ASTM Motor Fuels section Annex 2”

Agency Response – The agency is denying the Alliance’s request to amend these citations. The regulations regarding incorporation by reference require that the language incorporating a publication by reference must be as precise as possible.⁵ Prior to the January 6, 2012 final rule, the material was cited as located in “Annex 2” of “Motor Fuels, Section 1” of the 1985 Annual Book of ASTM standards. However, after examining the agency’s copy of the standard, the reference was slightly edited in the final rule to reflect precisely the title of the relevant material and its location.

We note that although the portion of Volume 05.04 referenced may be known as Annex 2 of “Motor Fuels, Section 1” or listed as Annex 2 elsewhere, the precise title of that portion is “A2. Reference Materials and Blending Accessories.” The citation clarifies that A2 is

⁵ 1 CFR 51.9

associated with the Motor Fuels section of the volume so as not to confuse it with the annexes to other sections (e.g., aviation fuel). The Alliance petition did not provide any additional information as to why the requested amendments were necessary to identify the material incorporated by reference nor did the petition identify any error or potential confusion associated with the amended citation. Based on the foregoing, the agency is denying this request.

III. Corrections to FMVSS Nos. 121 and 209

This document adds a cross-reference to Section 571.5 in FMVSS No. 121, Air Brake Systems, and makes minor corrections to the citation format of two ASTM standards incorporated by reference. This document also deletes an extra period in FMVSS No. 209, Seat Belt Assemblies.

IV. Rulemaking Analyses and Notices

We have considered the impact of this rulemaking action under Executive Order 12866, “Regulatory Planning and Review,” Executive Order 13563, “Improving Regulation and Regulatory Review,” and the Department of Transportation’s regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under those two Executive Orders. This rule makes several minor changes to the regulatory text of FMVSS Nos. 121, 202a, 209, and 301, as well as to the consolidated list of materials incorporated by reference in 49 CFR 571.5. This rule does not increase the regulatory burden on manufacturers. It has been determined to be not “significant” under Executive Order 12866 and the Department of Transportation’s regulatory policies and procedures.

Executive Order 13563 also requires agencies to review existing rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome. Pursuant to this Executive Order, the agency conducted a detailed review of the final rule, including the

provisions identified by the Alliance's petition, and identified several additional technical errors that this document corrects.

The agency has discussed the relevant requirements of the Vehicle Safety Act, the National Environmental Policy Act, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act, the Paperwork Reduction Act, Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks), the National Technology Transfer and Advancement Act, and Executive Order 13211 (Energy Effects), as applicable, in the underlying substantive rules establishing and amending the various sections of Part 571. Those discussions are not affected by these amendments.

Effective Date

We are making the amendments effective 30 days after publication of this document. Section 30111(d) of title 49, United States Code, provides that a FMVSS may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed except when a different effective date is, for good cause shown, in the public interest. These amendments do not impose new requirements on manufacturers, but instead make amendments to the regulatory text of several FMVSSs and the list of materials incorporated by reference to correct minor errors. Therefore, good cause exists for these amendments to be made effective before the 180th day after issuance of this final rule.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year.

You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://www.regulations.gov>.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for 49 CFR part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

2. Amend § 571.5 by revising paragraph (d)(28) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(d) * * *

(28) ASTM E274–65T, “Tentative Method of Test for Skid Resistance of Pavements Using a Two-Wheel Trailer,” issued 1965, into §§ 571.208; 571.301.

* * * * *

3. Amend § 571.121 by revising paragraph S5.3.6.1 to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.3.6.1 Using a full-treadle brake application for the duration of the stop, stop the vehicle from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, on a 500-foot radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured on a straight or curved section of the curved roadway using an ASTM E1136-93 (Reapproved 2003) (incorporated by reference, see § 571.5) standard reference tire, in accordance with ASTM E1337-90 (Reapproved 2008) (incorporated by reference, see § 571.5), at a speed of 40 mph, with water delivery.

* * * * *

4. Amend § 571.202a by revising paragraph S5 and paragraph S5.3.4 to read as follows:

§ 571.202a Standard No. 202a; Head restraints; Mandatory applicability begins on September 1, 2009.

* * * * *

S5 Procedures. Demonstrate compliance with S4.2 through S4.4 of this section as follows. The positions of seat adjustment specified in S5 and S5.1 are conditions to be met concurrently and are not a sequential list of adjustments. Any adjustable lumbar support is adjusted to its most posterior nominal design position. If the seat cushion adjusts independently of the seat back, position the seat cushion such that the highest H-point position is achieved with respect to the seat back, as measured by SAE Standard J826 JUL95 (incorporated by reference, see §571.5) manikin, with leg length specified in S10.4.2.1 of § 571.208 of this Part. If the specified position of the H-point can be achieved with a range of seat cushion inclination angles,

adjust the seat inclination such that the most forward part of the seat cushion is at its lowest position with respect to the most rearward part. All tests specified by this standard are conducted with the ambient temperature between 18 degrees C. and 28 degrees C.

* * * * *

S5.3.4 Seat Adjustment. The following seat adjustments specify conditions to be met concurrently and are not a sequential list of adjustments. At each outboard designated seating position, using any control that primarily moves the entire seat vertically, place the seat in the lowest position. Using any control that primarily moves the entire seat in the fore and aft directions, place the seat midway between the forwardmost and rearmost position. If an adjustment position does not exist midway between the forwardmost and rearmost positions, the closest adjustment position to the rear of the midpoint is used. Adjust the seat cushion and seat back as required by S5 of this section. If the seat back is adjustable, it is set at an inclination position closest to 25 degrees from the vertical, as measured by SAE Standard J826 JUL95 (incorporated by reference, see §571.5) manikin. If there is more than one inclination position closest to 25 degrees from the vertical, set the seat back inclination to the position closest to and rearward of 25 degrees. If the head restraint is adjustable, adjust the top of the head restraint to a position midway between the lowest position of adjustment and the highest position of adjustment. If an adjustment position midway between the lowest and the highest position does not exist, adjust the head restraint to a position below and nearest to midway between the lowest position of adjustment and the highest position of adjustment.

* * * * *

5. Amend § 571.209 by revising the introductory text of paragraph S5.2(j)(2)(iii) to read as follows:

§ 571.209 Standard No. 209; Seat belt assemblies.

* * * * *

S5.2 * * *

(j) * * *

(2) * * *

(iii) Dynamic tests: Each acceleration pulse shall be recorded using an accelerometer having a full scale range of ± 10 g and processed according to the practices set forth in SAE Recommended Practice J211-1 DEC2003 (incorporated by reference, see § 571.5) Channel Frequency Class 60. The webbing shall be positioned at 75 percent extension, and the displacement shall be measured using a displacement transducer. For tests specified in S5.2(j)(2)(iii)(A) and (B), the 0.7 g acceleration pulse shall be within the acceleration-time corridor shown in Figure 8 of this standard.

* * * * *

6. Amend § 571.301 by revising paragraph S7.5.4 to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

* * * * *

S7.5.4 The concrete surface upon which the vehicle is tested is level, rigid, and of uniform construction, with a skid number of 75 when measured in accordance with ASTM E274–65T (incorporated by reference, see § 571.5) at 64 km/h, omitting water delivery as specified in paragraph 7.1 of that method.

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Issued on: April 4, 2013

Christopher J. Bonanti
Associate Administrator for
Rulemaking

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